

**JEAN-RENE BASLE**  
County Counsel

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Chief Assistant County Counsel



**JAN 25 2017**

**COUNTY COUNSEL**  
385 NORTH ARROWHEAD AVENUE, 4<sup>th</sup> FLOOR  
SAN BERNARDINO, CA 92415-0140

(909) 387-5455 Fax (909) 387-5462

January 18, 2017

David J. Weinsoff  
Law Office of David J. Weinsoff  
138 Ridgeway Avenue  
Fairfax, CA 94930

RE: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act) dated December 8, 2016 concerning the Ontario International Airport

Dear Mr. Weinsoff:

This letter is written on behalf of the County of San Bernardino ("County") in response to the referenced Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act) dated December 8, 2016 (the "Notice"). In addition to the County, the Notice was also provided to the Ontario International Airport Authority ("OIAA"), the Ontario International Airport ("Airport"), and the City of Ontario ("City").

We write to advise you that the Notice has been given erroneously to the County. Under the federal statutes cited in the Notice, the County is neither an "owner" nor an "operator" as of the date of this letter, as of the date of the Notice, or as of the date of the alleged violations identified in the Notice.

A check of the Official Records of the County of San Bernardino quickly discloses that title to the many parcels comprising the Airport property was held by the City of Los Angeles until October 31, 2016, when title was transferred to the OIAA. The Notice states that the "range of dates covered by this Notice is from July 1, 2015 to December 8, 2016." The official transfer of the Airport occurred as of November 1, 2016. Since the Airport was owned and operated by the City of Los Angeles until October 31, 2016, the County could not be liable for the alleged violations occurring prior to the transfer. See, *Gwaltney of Smithfield v. Chesapeake Bay Foundation* (1987) 484 U.S. 49, at 69.

Following the transfer of ownership of the Airport on November 1, 2016, the OIAA, not the County, became the owner and operator of the Airport. The County is a signatory to a "Joint Exercise of Powers Agreement" with the City under which the parties created the OIAA, in accordance with California Government Code section 6502. The County appoints one member

to the OIAA, and the OIAA is empowered to, among other things, own and manage real property, including the Airport. For your convenience, a copy of the Joint Exercise of Powers Agreement is enclosed herewith; we refer you specifically to Section 11, Debts, Liabilities, Obligations, which provides, in part, that "all debts, liabilities, and obligations of the Authority shall be those of the Authority, and do not constitute debts, liabilities, or obligation of the Parties." As such, both prior to and after the transfer of the Airport from the City of Los Angeles to the OIAA, the County was neither an owner nor an operator of the Airport and, therefore, is not liable for the alleged violations of the Clean Water Act as set forth in the Notice.

Based on the facts stated in this letter, it would be improper for you and your client to file a lawsuit naming the County of San Bernardino for the alleged violations of the Clean Water Act as set forth in the Notice.

Very Truly Yours,



JEAN-RENE BASLE  
County Counsel

Enclosure: Joint Exercise of Powers Agreement  
#2FV2077

cc: Gregory Devereaux, County Chief Executive Officer

Mr. Kelly J. Fredericks, CEO  
Mr. Alan D. Wapner, President  
Ontario International Airport Authority  
303 East B Street  
Ontario, CA 91764

Ontario International Airport  
Head of Agency  
Administrative Offices  
1923 East Avion Street  
Ontario, CA 91761

Mr. Al C. Boling, City Manager  
Members of the City Council  
City of Ontario, City Hall  
303 East B. Street  
Ontario, CA 91764

**Service List:**

Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Washington, D.C. 20460

Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 95812

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Executive Director  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

John E. Brown, Esq.  
Best, Best & Krieger  
2855 E. Guasti Road, Suite 400  
Ontario, CA 91761

Stephen G. Larson, General Counsel  
Ontario International Airport Authority  
Larson O'Brien LLP  
555 S. Flower Street, Suite 4400  
Los Angeles, CA 90071



**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY, CALIFORNIA  
AND RECORD OF ACTION**

August 28, 2012

**FROM: GREGORY C. DEVEREAUX, Chief Executive Officer  
County Administrative Office**

**SUBJECT: JOINT EXERCISE OF POWERS AGREEMENT FORMING THE ONTARIO  
INTERNATIONAL AIRPORT AUTHORITY**

**RECOMMENDATION(S)**

Adopt a resolution (**Resolution No. 2012-168**) approving a Joint Exercise of Powers Agreement (**Agreement No. 12-614**) with the City of Ontario forming the Ontario International Airport Authority (OIAA) and appointing the County's member to serve on the OIAA governing body.  
(Affected Districts: Fourth)

(Presenter: Gregory C. Devereaux, Chief Executive Officer, 387-5417)

**BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES**

**Create, Maintain and Grow Jobs and Economic Value in the County.**

**Operate in a Fiscally-Responsible and Business-Like Manner.**

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.**

**Pursue County Goals and Objectives by Working with Other Governmental Agencies.**

**FINANCIAL IMPACT**

Approval of this item will not result in the use of additional discretionary general funding (net county cost). The Ontario International Airport (ONT) is a vital economic asset to the County of San Bernardino, the City of Ontario, the Inland Empire, and the regional air transportation system that serves Southern California. The successful operation of ONT results in positive economic impacts to area manufacturers, logistics companies, and creates employment for area residents and enhanced business opportunities for entities engaged in or dependent upon aviation-oriented activities. Passenger traffic at ONT peaked in 2007 with 7.2 million passengers and dropped nearly 41% to 4.2 million in 2012. The decline inflicted a \$494 million blow to the Inland Empire's economy and the loss of more than 9,000 jobs.

**BACKGROUND INFORMATION**

Approval of this item will authorize the County's participation in a Joint Exercise of Powers Agreement with the City of Ontario forming the OIAA to provide overall direction in the maintenance, management, development, and marketing of ONT for the benefit of the citizens of San Bernardino County, and the economic development of the Inland Empire Region.

The ONT is currently operated by Los Angeles World Airports through the City of Los Angeles. The County of San Bernardino and the City of Ontario recognize that the public interest,

Page 1 of 2

cc: w/ resolution  
CAO-Devereaux w/ agree  
Contractor c/o Dept w/ agree  
ACR-Acct Pay Mgr w/ agree  
EBIX/BPO c/o Risk  
CAO-Welty  
File - JPA/Ontario International  
Airport Authority

jr 9/4/12

**ITEM 12**

Record of Action of the Board of Supervisors  
**APPROVED (CONSENT CALENDAR)**  
COUNTY OF SAN BERNARDINO  
Board of Supervisors

MOTION	AYE	AYE	MOVE	SECOND	AYE
	1	2	3	4	5

LAURA H. WELCH, CLERK OF THE BOARD

BY \_\_\_\_\_

DATED: August 28, 2012

**JOINT EXERCISE OF POWERS AGREEMENT FORMING THE ONTARIO  
INTERNATIONAL AIRPORT AUTHORITY  
AUGUST 28, 2012  
PAGE 2 OF 2**

convenience, and necessity require the continuing operation, maintenance, management, administration, development, and marketing of the ONT as a public airport facility. The airport serves the community by providing for personal and business travel, both to local residents and visitors, which generates value to the City, County, and surrounding areas.

The OIAA will be governed by a five-member commission consisting of elected officials and community and business leaders from the airport's vast air service region. Two members will be from the Ontario City Council, one member will be the County Supervisor representing the Supervisorial District in which ONT is located, and two will be prominent community members residing within ONT's air service market which includes seven million residents in a four-county region, including Los Angeles.

The Joint Exercise of Powers Agreement was approved by the Ontario City Council on August 21, 2012. Once approved by the County, the Authority can commence operations.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Robert Messinger, Deputy County Counsel, 387-8979) on August 22, 2012; and the County Administrative Office (Kelly Welty, Administrative Analyst, 387-5426) on August 20, 2012.



**RESOLUTION NO. 2012-168**

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO, AUTHORIZING THE COUNTY OF SAN BERNARDINO TO ENTER INTO A JOINT POWERS AGREEMENT, SUBSTANTIALLY IN THE FORM ATTACHED HERETO AS EXHIBIT "A", WHICH PROVIDES FOR THE FORMATION OF THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY TO OPERATE, MAINTAIN, MANAGE, ADMINISTER, DEVELOP, AND MARKET THE ONTARIO INTERNATIONAL AIRPORT LOCATED WITHIN THE CITY OF ONTARIO, CALIFORNIA; AND APPOINTING THE COUNTY OF SAN BERNARDINO'S MEMBER OF THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY COMMISSION.

**WHEREAS**, the Ontario International Airport (the "Airport") is located within the City of Ontario (the "City") and the County of San Bernardino (the "County") in the State of California; and

**WHEREAS**, the public interest, convenience, and necessity require the continuing operation, maintenance, management, administration, development, and marketing of the Airport as a public airport facility; and

**WHEREAS**, the City and County (collectively the "Parties") have a strong interest in the success of the Airport as a main driver of economic development in the Inland Empire region of Southern California as a whole, and Ontario and San Bernardino County in particular; and

**WHEREAS**, the Parties wish to participate in the operation, maintenance, management, development, and marketing of the Airport for the benefit of the citizens of Ontario and San Bernardino County, and the economic development of the Inland Empire region of Southern California generally, and Ontario and San Bernardino County specifically; and

**WHEREAS**, the Parties are each empowered by law to acquire, construct, improve, develop, repair, maintain, operate, administer, and lease airports or airport-related facilities; and

**WHEREAS**, the County has determined that the Agreement does not constitute a "project" for purposes of CEQA pursuant to CEQA Guidelines section 15378(b)(5), which provides that a "project" does not include organizational or administrative activities of governments that will not result in physical changes to the environment;

**NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO DOES RESOLVE AS FOLLOWS:**

Section 1. The Board of Supervisors finds that all of the facts set forth in the Recitals are true and correct, and are incorporated herein by reference.

Section 2. All opportunities for public testimony and comment have been conducted in compliance with State law and the San Bernardino County Code.

Section 3. The Board of Supervisors hereby determines that the County's best interests, as well as of the public in general, will be served if the Airport is operated, maintained, managed, developed, and marketed under the control of a joint powers authority created by the Parties.

Section 4. The Joint Exercise of Powers Agreement Between the City of Ontario and the County of San Bernardino Creating an Agency to be Known as the Ontario International Airport Authority (the "Agreement"), attached hereto as Exhibit A, and incorporated herein by reference, is hereby approved and the Chair of the Board of Supervisors, or her designee, is hereby authorized and directed to execute, for and on behalf of the County, the Agreement.

Section 5. The Board of Supervisors hereby acknowledges that the County is entitled to one (1) member on the Ontario International Airport Authority Commission (the "Commission"), established pursuant to Section 3.B of the Agreement and that member shall be the Supervisor of the San Bernardino County Board of Supervisors representing the supervisorial district in which the Airport is located; and the Board of Supervisors therefore affirms that the Airport is located in the Fourth Supervisorial District of the County of San Bernardino and appoints Supervisor Gary C. Ovitt to serve as the County's member of the Commission.

Section 6. The Board of Supervisors hereby affirms that the approval and execution of the joint exercise of powers agreement is not a "project" under CEQA.

Section 7. This Resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED by the Board of Supervisors of the County of San Bernardino, State of California by the following vote:**

<b>AYES:</b>	<b>SUPERVISORS</b>	<b>Mitzelfelt, Rutherford,Derry,Ovitt,Gonzales</b>
<b>NOES:</b>	<b>SUPERVISORS</b>	<b>None</b>
<b>ABSENT:</b>	<b>SUPERVISORS</b>	<b>None</b>

\*\*\*\*\*

<b>STATE OF CALIFORNIA</b>	<b>)</b>
	<b>)ss</b>
<b>COUNTY OF SAN BERNARDINO</b>	<b>)</b>

**I, LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San Bernardino, State of California, hereby certify the foregoing to be a full, true and correct copy of the record of the action taken by the Board of Supervisors, by vote of the members present, as the same appears in the Official Minutes of said Board at its meeting of August 28<sup>th</sup>, 2012. #12**

**LAURA H. WELCH**  
**Clerk of the Board of Supervisors**

By: \_\_\_\_\_  
Deputy





County of San Bernardino

FAS

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	FAS Vendor Code	SC	Dept.	A	Contract Number 12-614	
ePro Vendor Number					ePro Contract Number	
County Department County Administrative Office			Dept.	Orgn.	Contractor's License No.	
County Department Contract Representative Gregory C. Devereaux			Telephone (909)387-5417		Total Contract Amount \$0.00	
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason:						
Commodity Code		Contract Start Date		Contract End Date		Original Amount
Amendment Amount						
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Project Name Ontario International Airport Authority (OIAA) Joint Powers Agreement			Estimated Payment Total by Fiscal Year			
			FY	Amount	I/D	

CONTRACTOR Ontario International Airport Authority Joint Powers Agreement

Federal ID No. or Social Security No. \_\_\_\_\_

Contractor's Representative See attached JPA

Address \_\_\_\_\_ Phone ( ) - \_\_\_\_\_

Nature of Contract: *(Briefly describe the general terms of the contract)*

*A Joint Exercise of Powers Agreement with the City of Ontario forming the Ontario International Airport Authority (OIAA) to provide overall direction in the maintenance, management, development, and marketing of the Ontario International Airport (ONT) for the benefit of the citizens of San Bernardino County, and the economic development of the Inland Empire Region; and appointing the County's member to serve on the OIAA governing body.*

*(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)*

Approved as to Legal Form (sign in blue ink)  County Counsel Date <u>8-27-12</u>	Reviewed as to Contract Compliance  Date _____	Presented to BOS for Signature  Department Head Date <u>8/27/12</u>
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Auditor-Controller/Treasurer/Tax Collector Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

**JOINT EXERCISE OF POWERS AGREEMENT  
BETWEEN  
THE CITY OF ONTARIO AND THE COUNTY OF SAN BERNARDINO  
CREATING AN AGENCY TO BE KNOWN AS  
THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY**

**THIS JOINT EXERCISE OF POWERS AGREEMENT** (the "**Agreement**"), dated as of August 21, 2012 is entered into by and between the **CITY OF ONTARIO**, a general law city and municipal corporation duly organized and existing under the Constitution and laws of the State of California ("**Ontario**"), and the **COUNTY OF SAN BERNARDINO**, a political subdivision of the State of California duly organized and existing under the Constitution and laws of such state ("**San Bernardino**" and together with Ontario, the "**Parties**").

**WITNESSETH**

**WHEREAS**, the Ontario International Airport (the "**Airport**") is located within the City of Ontario and the County of San Bernardino in the State of California; and

**WHEREAS**, the public interest, convenience, and necessity require the continuing operation, maintenance, management, administration, development, and marketing of the Airport as a public airport facility; and

**WHEREAS**, the Parties have a strong interest in the success of the Airport as a main driver of economic development in the Inland Region of Southern California as a whole, and Ontario and San Bernardino in particular; and

**WHEREAS**, the Parties wish to participate in the operation, maintenance, management, development, and marketing of the Airport for the benefit of the citizens of Ontario and San Bernardino, and the economic development of the Inland Region of Southern California generally, and Ontario and San Bernardino specifically; and

**WHEREAS**, the Parties are each empowered by law to acquire, construct, improve, develop, repair, maintain, operate, administer, and lease airports or airport-related facilities; and

**WHEREAS**, it has been determined by each of the Parties that the best interest thereof, as well as of the public in general, will be served if the Airport is operated, maintained, managed, developed, and marketed under the control of a joint powers authority created by the Parties in this Agreement; and

**WHEREAS**, it is the intent and desire of the Parties to establish a public entity, separate and apart from the Parties hereto, as hereinafter described and set forth, which entity shall then set about the task of accomplishing the purpose of this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions hereinafter stated the Parties agree as follows:



## **Section 1. Definitions.**

Except where the context otherwise clearly requires, the following words and phrases shall have the meanings specified below:

"Act" shall mean the Joint Exercise of Powers Act of the State of California, commencing with California Government Code Section 6500, as now existing or may hereinafter be amended or supplemented.

"Agreement" shall mean this Joint Exercise of Powers Agreement by and between the Parties, as supplemented, amended and/or restated.

"Airport" shall mean the Ontario International Airport, including all of the facilities appurtenant or related thereto.

"Authority" shall mean the Ontario International Airport Authority, a joint powers authority created by this Agreement in accordance with the Act.

"Claims" shall mean claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, for any actual or alleged personal injury, death, or damage or destruction of tangible or intangible property, including the loss of use.

"Commission" shall mean the Ontario International Airport Authority Commission established pursuant to Section 3 of this Agreement, as it may be constituted from time to time.

"Ontario" shall mean the City of Ontario, a general law city and municipal corporation duly organized and existing under the Constitution and laws of the State of California.

"Parties" shall mean Ontario and San Bernardino.

"Revenues" shall mean all charges received for, and all other income and receipts derived by the Authority from, the operation of the Airport or arising from the Airport.

"San Bernardino" shall mean the County of San Bernardino, a political subdivision of the State of California duly organized and existing under the Constitution and laws of such state.

## **Section 2. Purpose.**

This Agreement is made pursuant to the Act as it relates to the joint exercise of powers common to the Parties. The purpose of this Agreement is to exercise such powers for the operation, maintenance, management, administration, development, and marketing of the Airport. Such purposes shall be accomplished, and said common powers exercised, in the manner set forth herein, subject, however, to such restrictions as are applicable to Ontario in its manner of exercising such powers, as required by California Government Code Section 6509. The Parties each possess the powers necessary or convenient to the accomplishment of said purposes. The Authority shall possess, in addition to the powers common to the Parties, all the powers authorized pursuant to the Act, including, but not limited to, Article 2 of the Act



(commencing with California Government Code Section 6540) and Article 4 of the Act (commencing with California Government Code Section 6584 and commonly known as the Marks-Roos Local Bond Pooling Act of 1985), and may exercise such powers in accordance with the provisions of this Agreement and the Act.

### **Section 3. Authority.**

#### **A. Creation of Authority.**

Pursuant to Section 6502 of the Act, there is hereby created a public entity separate, apart and independent from the Parties, known as the "Ontario International Airport Authority."

#### **B. Commission.**

The Authority shall be governed by a commission of five (5) members, each serving in his or her individual capacities. Said commission shall be called the "Ontario International Airport Authority Commission." Ontario shall be entitled to four (4) members, each of whom shall be appointed by resolution of the Ontario City Council. Ontario's appointees shall include two (2) members of the business community with their primary business interest being located within the market service area of the Airport as determined by the Ontario City Council and two (2) Ontario City Council members. San Bernardino shall be entitled to one (1) member, who shall be the Supervisor of the San Bernardino County Board of Supervisors representing the supervisorial district in which the Airport is located.

Members shall hold membership on the Commission during the term for which they were appointed and until their successors have been appointed and qualified; provided, however, that members may resign voluntarily or, if applicable, may be removed by and at the pleasure of the party which appointed them, and provided, further, that any member who also serves as a member of the governing body of any Party shall automatically forfeit such member's membership on the Commission if such member ceases to be a member of the governing body, but after such forfeiture, such member may be appointed or reappointed to the Commission. In case of a vacancy in membership on the Commission, the same shall be promptly filled, if applicable, by the party which appointed the vacating member. An appointment to fill a vacancy during an unexpired term shall be for a period of the unexpired term. Promptly upon the making of such an appointment, the appointing party shall notify the Secretary of the Commission of such appointment.

#### **C. Authority to Expend Revenues.**

The Commission shall authorize the expenditure of any and all Revenues of the Authority. Authorized expenditures shall include payments toward incurred debt, operations and maintenance costs, expansion and construction of additional facilities and improvements, reimbursement of Parties' contributions (including the costs of Party employees from the initial date of formation) and other obligations.

D. Meetings of the Commission.

(1) Regular Meetings.

The Commission shall provide for its regular, adjourned regular and special meetings; provided, however, that at least one regular meeting shall be held in each year. The dates upon which, and the hour and place at which, any regular meeting shall be held shall be fixed by resolution and a copy of such resolution shall be filed with each member of the Commission, the City Clerk of Ontario and the San Bernardino Board of Supervisors.

(2) Ralph M. Brown Act.

All meetings of the Commission, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with California Government Code Section 54950).

(3) Quorum.

Three (3) members of the Commission shall constitute a quorum for the transaction of business at any meeting. In the absence of a quorum at any meeting of the Commission, a majority of the members present may adjourn the meeting from time to time without further notice, but no other business may be transacted.

(4) Voting.

Any action taken by the Commission at a meeting shall require the affirmative vote of a [majority] of the members of the Commission.

(5) Minutes.

The Secretary of the Commission shall keep or cause to be kept, at the principal office or such other place as the Commission may order, a book of minutes of all meetings of the Commission and its committees, with the time and place of holding, whether regular or special, and if special how authorized, the notice thereof given, the names of those present at the meetings, and the proceedings thereof. As soon as practicable after each meeting, the Secretary shall cause a copy of the minutes to be forwarded to each member of the Commission, the City Clerk of Ontario and the San Bernardino Board of Supervisors.

E. Officers.

(1) President, Vice President, Secretary, and Assistant Secretary.

The Commission shall elect or reelect a President, Vice President and Secretary as officers of the Authority at the first meeting of the Commission. In the event that the President, Vice President or Secretary so elected resigns from such office or ceases to be a member of the Commission, the resulting vacancy shall be filled at the next regular meeting of the Commission



held after such vacancy occurs. In the absence or inability of the President to act, the Vice President shall act as President. The President, or in the President's absence the Vice President, shall preside at and conduct all meetings of the Commission. The Secretary shall be responsible for the minutes and other records of the Authority and shall perform such other duties specified by the Commission. The Commission may elect an Assistant Secretary to assist the Secretary in the performance of the Secretary's duties, to certify copies of official documents of the Authority and to perform such other duties specified by the Commission.

(2) Treasurer.

The Commission on behalf of the Authority shall appoint a Treasurer who shall be: (1) the Treasurer of one of the Parties; (2) a certified public accountant; or (3) such other officer or employee as the Commission shall deem qualified to act as Treasurer of the Authority. The Treasurer shall perform such duties as are set forth in this Agreement and any other duties specified by the Commission.

(3) Auditor.

The Commission on behalf of the Authority shall appoint an Auditor who shall be: (1) the Controller of one of the Parties; or (2) such other officer or employee as the Authority shall deem qualified to act as Auditor of the Authority. The Auditor shall perform such duties as are set forth in this Agreement and any other duties specified by the Commission.

(4) Staff.

The Commission on behalf of the Authority may employ or engage, on an independent contractor basis or otherwise, an Airport Manager, which may be a corporation, partnership, firm or individual, and such staff and professional and expert services as may be necessary to accomplish the purposes of this Agreement, including, without limitation, legal counsel, financing consultants, accountants, engineers, architects, contractors, appraisers and other consultants and advisors.

#### **Section 4. Powers.**

The Authority shall possess all powers common to the Parties, as well as any additional powers granted by the California State Legislature (including, but not limited to, the Act), necessary or convenient to the operation, maintenance, management, development, and marketing of the Airport.

The Authority may also issue revenue bonds or other evidence of indebtedness, pursuant to Article 2 and Article 4 of the Act and any other applicable laws of the State of California, whether heretofore or hereafter enacted or amended, and may borrow from any source including, without limitation, the federal government.

The Authority's powers shall include, but not be limited by, the following:

- (a) to negotiate price and method of acquiring land, airport facilities, and related facilities;



- (b) to make and execute all contracts, agreements and documents, including but not limited to agreements with any one or more of the Parties to this Agreement, other local governments, agencies or departments, the State of California, the federal government, or agencies thereof, or any entity, person, or corporation, of any kind or nature whatever;
- (c) to employ agents, servants and employees;
- (d) to acquire, construct, maintain, manage, operate, and lease buildings, works and improvements;
- (e) to acquire, hold and dispose of property, both real and personal;
- (f) to accept gifts;
- (g) to sue and be sued in its own name;
- (h) to conduct any environmental impact studies and proceedings, including the preparation of reports, as are required by any local government, the State of California and/or the federal government;
- (i) to issue revenue bonds and to incur other debts, liabilities or obligations (both long-term and short-term) pursuant to the Act and this Agreement which shall not be debts, liabilities or obligations of the Parties executing this Agreement;
- (j) to grant franchises, permits and licenses and to lease and contract with, any person, firm or corporation, or agency of the State of California and/or federal government, for any period up to but not exceeding the maximum period as is provided by law, for the use of the acquired facilities or any part or parts thereof, for the promotion and accommodation of air commerce and air navigation, or any use incidental thereto, together with a right or rights to use said facilities in common with others as necessary to the right(s) granted; and likewise to enter into leases or contracts with any person, firm or corporation for purposes other than the promotion and accommodation of air commerce and air navigation covering any portion of the facilities acquired whenever it is determined by the Commission that the use of such portions of the airport facility is not necessary for the promotion and accommodation of air commerce and air navigation or for uses incidental thereto;
- (k) subject to the powers of the federal government respecting commerce, to establish policies, rules and regulations governing the use and control of any airport facilities owned or operated by the Authority, and the use of airways proximate thereto and incidental to air navigation;
- (l) to apply for and receive any available State of California and/or federal government grants;
- (m) to operate, construct, repair, maintain, manage and administer airport facilities and other property;
- (n) to exercise the power of eminent domain;
- (o) to acquire, operate, maintain and contract for air and ground transportation services incidental to the purposes of this Agreement;

- (p) to acquire, construct, operate, maintain, and contract for parking facilities, roads, overpasses, and other improvements;
- (q) to develop, advertise and promote commerce and tourism;
- (r) to own and operate aircraft and helicopters;
- (s) to employ and retain legal counsel;
- (t) to adopt a budget;
- (u) to establish a treasury for the deposit and disbursement of revenue funds and monies, according to the policies and procedures set forth in this Agreement;
- (v) to invest any money held in the treasury that is not required for immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies pursuant to California Government Code Section 53601;
- (w) to impose and collect passenger facility charges, consistent with federal law and policy; and
- (x) to take such action as may be necessary to comply with federal safety regulations, 14 CFR Part 139, as that rule may be amended from time to time; with commitments in agreements for acceptance of federal grants under 49 U.S.C. Section 47101 et seq.; and with obligations in federal surplus property deeds.

The listing of the above acts is not intended to indicate any priority of one act over another. Nor is such listing intended to be inclusive, and other acts may be done in the accomplishment of the purposes of this Agreement as are authorized. One or several acts may take place concurrently or in sequence.

#### **Section 5. Fiscal Year.**

The fiscal year of the Authority shall commence on the first day of July in each year and end on the last day of June of the following year.

#### **Section 6. Revenue Bonds.**

The Authority may issue revenue bonds in accordance with the Act or other applicable law for the issuance of such bonds or other forms of indebtedness (collectively, the "Bonds") for the purpose of exercising its powers including refunding all or any of the Bonds issued and raising funds necessary to carry out its obligations under this Agreement.

It is anticipated that such Bonds or any other borrowings will be payable from Revenues generated from the Airport, one or more pledges of Revenues from the Authority, or any other legally available funds.



## **Section 7. Official Bonds.**

Members, officers and employees of the Commission or the Authority shall also file such official bonds as may be required by any resolution (or indenture) adopted by the Authority pursuant to the Act. All bond premiums shall be paid by the Authority.

## **Section 8. Assistance to the Authority.**

The Parties may, except as prohibited by law and this Agreement, in appropriate circumstance: (i) make contributions from their treasuries or other sources for the purposes set forth herein, (ii) make payments of public funds to defray the cost of such purposes, (iii) make advances of public funds for such purposes, such advances or payments to be repaid, as provided herein, or (iv) use their personnel, equipment, or property in lieu of or in conjunction with other contribution or advances. Such sums shall be paid to and disbursed by the Authority, and the method and manner of such payment, disbursement, and repayment shall be as set forth in separate agreements by and between the Authority and a Party and approved by the official action of the Commission on behalf of the Authority and by respective legislative body on behalf of such Party. The provisions of California Government Code Section 6513 are hereby incorporated into this Agreement.

## **Section 9. Accounts and Reports.**

There shall be strict accountability of all funds and reporting of all receipts and disbursements. To the extent not covered by the duties assigned to any trustee appointed pursuant to a resolution or trust indenture adopted by the Commission pursuant to applicable law for the issuance of revenue bonds or other forms of indebtedness, the Commission shall establish and maintain such procedures, funds and accounts as may be required by sound accounting practices or by the provisions of any resolution of the Authority authorizing the issuance of revenue bonds or other forms of indebtedness. The books and records of the Authority in the hands of the trustee or the Authority shall be available for inspection at all reasonable times by authorized representatives of the Parties. The Auditor, with the approval of the Authority, shall contract with an independent certified public accountant or firm of certified public accountants to make an annual audit of the accounts and records of the Authority, and a complete written report of such audit shall be filed as public records annually, within six (6) months after the conclusion of the Fiscal Year under examination, with each member of the Commission, the City Clerk of Ontario and the San Bernardino Board of Supervisors. Such annual audit and written report shall comply with the requirements of California Government Code Section 6505. The costs of the annual audit, including contracts with, or employment of, such independent certified public accountant or firm of certified public accountants, in making an audit pursuant to this Agreement shall be a charge against any unencumbered funds of the Authority available for such purpose.



## **Section 10. Funds.**

The Treasurer of the Authority shall have custody of Authority money and disburse Authority funds pursuant to the accounting procedures developed in accordance with the provisions of Section 9; provided that the provisions of any resolution of the Authority authorizing the issuance of revenue bonds or other forms of indebtedness shall control regarding the custody and disbursement of the proceeds of any revenue bonds or other forms of indebtedness issued pursuant thereto or any revenues pledged to the payment of such bonds or other forms of indebtedness.

Additionally, and to the extent not covered by the duties assigned to any trustee, the Treasurer of the Authority shall assume the duties described in California Government Code Section 6505.5, as follows:

- (a) receive and receipt for all money of the Authority and place it in the treasury of the Treasurer of the Authority;
- (b) be responsible upon his official bond for safekeeping and disbursement of all Authority money so held;
- (c) pay, when due, from money of the Authority so held, all sums payable on outstanding bonds, or other forms of indebtedness, of the Authority;
- (d) pay any other sums due from the Authority, from Authority money, or any portion thereof, only upon warrants of the Auditor of the Authority; and
- (e) verify and report in writing to the Authority and to each of the Parties on a monthly basis the amount of money then held for the Authority, the amount of receipts since the prior monthly report and the amount paid out since the prior monthly report.

Subject to the applicable provisions of any resolution or indenture adopted by the Authority pursuant to the Act or any financing agreement, which may provide for a trustee to receive, have custody of and disburse the Authority funds, the Treasurer of the Authority shall have the custody of and shall disburse Authority funds pursuant to the accounting procedures developed in accordance with the provisions of Section 9 hereof.

The Auditor of the Authority shall draw warrants to pay demands against the Authority when the demands have been approved by the Airport Manager of the Authority or any other person authorized to so approve in accordance with the accounting provisions developed in accordance with the provisions of Section 9 hereof.

The Authority may invest any money in the Treasury that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies pursuant to California Government Code Section 53601. The Ontario City Council shall determine the charges to be made against the Authority for the services of the Treasurer and the Auditor of the Authority, if such officers are employed by the City of Ontario, subject to the approval of the Commission.

## **Section 11. Debts, Liabilities, Obligations.**

Subject to all applicable laws, all debts, liabilities, and obligations of the Authority shall be those of the Authority, and do not constitute debts, liabilities, or obligations of the Parties. The responsibilities and obligations of each Party to this Agreement shall be solely as provided in this Agreement, or as provided in supplemental agreements or amendments as shall be executed by the Parties.

The Authority shall defend, indemnify, and hold harmless all Parties, their officers, and agents from and against all Claims arising out of, resulting from, or in connection with the performance of this Agreement by the Authority, its officers, employees, or agents.

## **Section 12. Notices.**

Any notices required or permitted to be made hereunder shall be in writing and shall be delivered in person or by certified or registered mail, postage prepaid, addressed to the attention of the Secretary of the Authority and to the City Clerk of Ontario and the Clerk of the Board of Supervisors of San Bernardino at their respective addresses set forth below:

If to the Authority:

Ontario International Airport Authority

Attention: Secretary

If to the City of Ontario:

Office of the City Clerk  
303 East B Street  
Ontario, CA 91764  
Attention: City Clerk

If to the County of San Bernardino:

Clerk of the Board of Supervisors  
County of San Bernardino  
385 North Arrowhead Avenue, 2<sup>nd</sup> Floor  
San Bernardino, CA 92415-0130  
Attention:

Any Party may designate a different address by giving to the Authority and the other Parties notice thereof in accordance with the provisions hereof. The Authority may designate a different address by giving both Parties notice thereof in accordance with the provisions hereof.

## **Section 13. Term, Amendments, Termination.**

This Agreement shall be effective upon approval and execution of this document by the Parties, may be amended by mutual consent of the Parties to include other cities or public entities or for other lawful purposes, and shall continue for so long as is necessary to carry out the purposes of this Agreement or until terminated by mutual consent of the Parties, whichever is later; provided, however, that:

- (a) This Agreement cannot be terminated until all revenue bonds or other forms of indebtedness issued pursuant hereto, and the interest thereon, shall have been paid or adequate provision for such payment shall have been made in accordance with the resolution of the Authority authorizing the issuance thereof;
- (b) This Agreement cannot be amended in any way to the detriment of the holders of any such revenue bonds or other forms of indebtedness which are outstanding in accordance with the resolution of the Authority authorizing the issuance thereof;
- (c) No termination or amendment shall be made which is contrary to the language, spirit, or intent of any agreement entered into by the Authority with the United States of America, the State of California, or any department, administration, or agency of either.

If this Agreement is terminated, as provided above, any property acquired as a result of the joint exercise of powers shall be divided or distributed in accordance with the law and mutual agreement of the Parties. After completion of the purpose of this Agreement, to wit, upon termination thereof, any surplus money on hand shall be returned to the then-Parties in proportion to the contributions made.

#### **Section 14. Non-Assignability of Participating Interests.**

The rights, titles and interests of any Party herein shall not be assignable or transferable unless such assignment or transfer is required by law and is not within the control of the Party affected by any such assignment or transfer.

#### **Section 15. Miscellaneous.**

##### **A. Headings.**

The section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

##### **B. Consents.**

Whenever any consent and/or approval is required under this Agreement from any Party, said consent and/or approval shall not be unreasonably withheld.

##### **C. Choice of Law.**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California applicable to agreements made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of California applicable hereto.

##### **D. Amendments and Modifications.**

This Agreement may only be modified by a written agreement adopted, executed and attested to by the Parties.



E. Severability.

In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable under any law of the State of California, the validity, legality and enforceability of the remaining provisions or obligations shall not in any way be affected or impaired thereby, provided, said remaining provisions or obligations continue to reflect the original intent of the Parties.

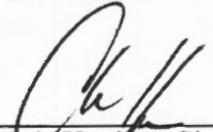
F. Successors.

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and assigns.

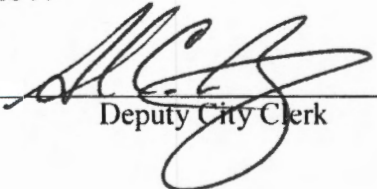
[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Joint Exercise of Powers Agreement.


CITY OF ONTARIO

By   
Chris Hughes, City Manager

ATTEST:

By   
Deputy City Clerk

COUNTY OF SAN BERNARDINO

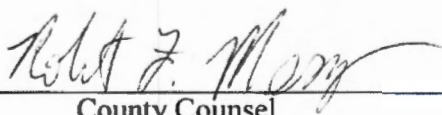
By   
Josie Gonzales, Chair

ATTEST:

By \_\_\_\_\_

APPROVED AS TO FORM

This 27<sup>th</sup> day of August, 2012

By   
County Counsel  
(SEAL)

